

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A.No. 91 of 2010

Brig. B.C. Sarmah

...Petitioner

Versus

Union of India & Ors.

...Respondent

For the Petitioner :

Petitioner himself

For the Respondents:

Ms. Jyoti Singh, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, MEMBER (A)

JUDGMENT

1. The petitioner vide this case no.91/2010 seeks expunging the Annual Confidential Report (ACR) for the period 18th July, 2006 to 30th June, 2007 and 01 July, 2007 to 30th June, 2008.

2. The petitioner sought permission to argue his case in person, which was granted. The facts of the case are that the petitioner was commissioned in the Army on 10th June, 1978. Due to his hard work and dedication, he was promoted as a Brigadier on 18th July, 2006. He was awarded the Sena Medal as a Colonel while serving in Insurgency Area. Besides, he was awarded Chief of Army Staff and Army Commander Commendation awards.
3. As a Brigadier he was appointed as Commander 27 Sector Assam Rifles (AR) with effect from 18th July, 2006. His sector Headquarters was deployed in Churachandpur in South Manipur since March, 2006. This necessitated change in command and control arrangements as also the channel of reporting.
4. Army Headquarters, Military Secretary's Branch (MS Br) raised a policy letter on 4th September, 2006 on rendition of ACR for Officers of 27 Sector AR. Relevant para reads as :

"2. Confidential report of officers serving with following units will be rendered on the under mentioned channel of reporting.

'2(a) HQ 27 Sect (Wef 16 March, 2006)

Sect Dr, 27 Sect AR

GOC, 57 Mtn Div

GOC, 3 Corps

iGAR (South) }

DG AR }

(to endorse Part IV/V)

GOC-IN-C, Eastern Comd.

(If Applicable)

It was appended by a note which read –

"IGAR and/or DG will endorse remarks on Part IV and V as per existing policy issued vide Army HQ letter No.31741/22/MS-4D() Channels dt.11 April, 1994"

5. The policy letter of 11th April, 1994, issued by Ms. Br which read –

"3. Endorsement by DIGAR, IGAR and DGAR will be as per the format at appendix B attached. Th endorsement will be on an additional sheet of paper and attached between page No.15 and 17 of IAFI-1123-B-I (Revised) and Page No.8 and 9 of IAFI-1123-II (Revised) forms."

6. These forms pertain to Colonels and below. A Brigadier is not included in this letter. Therefore, the policy letter of 4th September, 2006 read in conjunction with that of 11th April, 1994, clearly implies that Brigadiers are not included in

endorsement of Part IV and V of the ACR by Inspector General Assam Rifles South [IGAR(S)] and Director General Assam Rifles (DGAR). However, since DGAR is the head of Army / service, he could endorse as such. He further drew the attention to Army Order No.45/2001 which states at para 44(d) and 45(a) :

"44 (d) Assam Rifles – DIG/IG or DG Assam Rifles may attach additional sheet for their endorsement, when not in main channel of reporting, as per policy issued by MS Branch separately.

"45 Brigadier and above

- (a) *Brig/Maj Gen. – Army forms as appropriate be used for appointments inter services Organisation, and on deputation also. However, when civilian officer are to endorse reports, they be excluded from reporting on DPs/QsAP and recommendations for Promotion and Employment, as applicable, due to reason explained above. Policy on endorsement by Head of Mission to MA/DA abroad be same as at Paragraph 44(c) above.*

7. The petitioner argued that read in totality the channel of reporting laid down by the MS Branch letter of 4 September, 2006 and Note to para 2 of the same letter, compared with para

3 of the policy letter of 11th April, 1994 read in conjunction with Army Order 45/2001 clearly states that the ACR of Brigadier in AR will not be endorsed by the IGAR.

8. He further argued that had he been aware of the fact that IGAR(S) was in his chain of reporting, perhaps his relationship with him (IGAR-S) would have been different. Since IGAR(S) gave him a luke-warm report in Part – IV, the DGAR also was influenced by the endorsement of IGAR(S) and ratified it in Part-V.

9. He concluded his arguments by stating that in Assam Rifles, the administration is taken care of by Commanding Officers (Colonels) and Company Commanders (Major / Lt. Colonels) and in these matters they are directly responsible to the DGAR in terms of contracts, works, human resource management and equipment management. Infact, he as DIG(AR) and his Headquarters was dependant for all administrative issues on the Battalion Headquarters which

was always co-located. The DIG(AR) and IGAR have only the role of operations and overall coordination. That is the rationale as to why DIG AR (Brig.) and IGAR (Maj.Gen.) have not been included in the policy letter of 11th April, 2004.

10. The petitioner also alleged that neither his predecessor nor his successors have obtained endorsement by IGAR(S) in Part IV of the ACR. He stated that being directly under GOC 57 Mountain Division (Mtn Divn.) he correctly submitted the ACR to the Initiating Officer (IO) who in turn forwarded the same to GOC 3 Corps Reviewing Officer (RO). He had correctly cancelled the Part IV in the form by drawing a line which was obliterated by using a blocker and the IGAR(S) endorsed the same. However, in the ACR form for 2007-08 he did route the ACR for through IGAR(S) as he was instructed by the higher headquarters at 3 Corps.

11. The learned counsel for the Respondents stated that there are two aspects of command i.e. Operational and Administrative. The petitioner being Sector Commander 27 Sect AR was under operational Command of GOC 57 Mtn. Div. and administrative control of IGAR (S). The policy letter of MS Br dated 4th September, 2006 was effective from that year onwards. Therefore, ACR written on the petitioner upto 30th June, 2007 is squarely covered by the policy letter. The 4 September, 2006 letter at para 2(a) clearly states that IGAR(S) and DGAR will endorse the report "to endorse part IV/V". In this case since the petitioner was under administrative control of IGAR(S), Part-IV of ACR was endorsed by IGAR(S). As regards, his predecessor, she stated the MS Br. Policy letter 4 September, 2006 was not applicable and hence not relevant.
12. As regards, his successor(s), the learned counsel stated that it is correct to say that IGAR(S) has not endorsed part IV of the ACR. This has been done inadvertently and the ACR has now been placed under 'technical observation' by the MS Br and

endorsement of the IGAR(S) shall be obtained. An affidavit to that effect is placed on record.

13. Having heard both the parties at length and having perused the records in original, we are of the view that the Respondents are within their right to promulgate and revise channel of reporting in ACRs when the situation so dictates. In this case, the command and control arrangement in South Manipur had undergone a change with effect from March, 2006. 27 Sect AR which was inducted into South Manipur came under the operational command of GOC 57 Mtn Div. (Major Gen.). While the Sector remained under the administrative control of IGAR (S) again a Major General. The letter of 4th September, 2006 was, therefore, correctly issued. The policy letter was prospective and was effective for the ACRs covering the period 2006-2007, onwards. Secondly, para 2(a) of the letter of 4th September, 2006 clearly stated that in the case of Commander 27 Sect RR, the channel of reporting will be GOC 57 Mtn Div. (IO), GOC 3 Corps (RO),

GOC in C, Eastern Command (SRO) and IGAR(S) and DGAR to endorse Part IV and V of the ACR. This leaves no doubt that IGAR(S) was very much in the channel of reporting.

14. To the averment qua successor(s) of the petitioner not obtaining Part-IV of the report from IGAR(s), the respondents have conceded their mistake and the matter is being rectified.
15. The Note at the end of para 2 of the policy letter of 4 September, 2006, is an instruction as to how the report has to be endorsed and how it is to be appended to the ACR. It does not debar endorsement of IGAR on a Brig.
16. Be as it may, we have examined both the impugned ACRs and compared it with the previous reports. The IGAR(S) and DGAR have given an 'above average' assessment in Part-IV and V of the ACR 2006-2007 which is duly supported by the pen-picture. Infact, the same IGAR(S) and DGAR have given again an 'above average' grading in part-IV and V of the ACR 2007-08, with a supporting pen-picture. As such to contend that IGAR(S) has been unfair and unjust is incorrect. Besides,

the pen picture and grading are commensurate with the reports of the IO and RO in ACR 2006-07, and again in by the IO, RO and SRO in the ACR of 2007-08. Therefore, it is evident that the basis of aggrievement is misconceived.

17. In view of the foregoing, we are not inclined to interfere in the matter. The case is dismissed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
29th September, 2010